

RICHARD L. ROSENTHAL

IBLA 80-13

Decided January 23, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease, M 29793 Acq.

Reversed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

Where an oil and gas lessee erroneously transmits a check for the annual rental to the wrong office of the Bureau of Land Management, which office receives the payment 14 days prior to the anniversary date but takes no action either to forward the check to the proper office or return it to the lessee until the anniversary date of the lease, a petition for reinstatement of the terminated lease will be granted when it is established that the negligence of BLM employees was an equally causative factor in the lessee's failure to timely pay the rental.

APPEARANCES: Robert Mikovits, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

This appeal is from a decision, dated August 27, 1979, of the Montana State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease M 29793 Acq., which terminated by operation of law because of appellant's failure to pay the annual advance rental on or before the anniversary date of the lease, August 1, 1979, as required by 30 U.S.C. § 188 (1976); 43 CFR 3108.2-1(a).

The novel question which this case presents is whether an oil and gas lessee who tenders payment for the annual rental to the wrong BLM office, 2 weeks in advance of the anniversary date of the lease, has a reasonable expectation that either (1) the check will be returned to him within a reasonable time, or (2) the check would be forwarded to the proper BLM office within the same reasonable time. While there are a number of discrete aspects to this problem, we believe that, when examined in the totality of this appeal, appellant's petition for reinstatement should be granted.

Inasmuch as the peculiar facts of this case are determinative of the result, we will set them out at some length. On July 10, 1979, appellant mailed a payment for lease M 29793 Acq., which had an anniversary date of August 1, 1979, to the Colorado State Office, rather than the Montana State Office which had jurisdiction over the lease. This was clear error on the part of the appellant. We would note in passing that appellant's attempt to explain this error as having been caused by a new and inexperienced employee would not justify reinstatement under the well-established precedents of this Board. See Monturah Co., 10 IBLA 347 (1973).

The Colorado State Office received this payment on July 16, 1979. It was accompanied by rental checks for two Colorado leases as well as a copy of the courtesy notices which had been sent for all three leases. The records of the other two leases show that payment was entered thereon on July 16, 1979. The Colorado State Office took no action with regard to the check for the Montana lease until August 1, 1979, on which date a transmittal letter to the Montana State Office was prepared and presumably sent. This transmittal was received on August 6 in the Montana State Office which thereupon notified appellant that lease M 29793 Acq., had terminated for failure to timely file the rental. Appellant petitioned for reinstatement, which was denied by the State Office on the basis of this Board's decision in Gretchen Capital, Ltd., 37 IBLA 392 (1978). Appellant then timely pursued an appeal to this Board.

In Gretchen Capital the annual rental payment for a Montana lease was sent to the Eastern States Office of BLM, where it was received on June 26, 1978. The check was duly forwarded to the Montana State Office, but it was not received there until July 5, 1978, 2 days after the due date. In affirming the denial of the petition for reinstatement of the lease the Board stated: "[M]ailing the check to the wrong office logically and legally precludes a finding of reasonable diligence." 37 IBLA at 394.

Given the facts disclosed by the Gretchen case, the petition for reinstatement was properly denied therein. Unlike the present appeal, there was no evidence in Gretchen that the Eastern States employees had in any manner contributed to the failure of the rental payment to be timely received in the Montana State Office. Both a weekend and

the Independence Day holiday intervened between the date of receipt by the Eastern States Office and the receipt by the Montana State Office. This delay was strictly attributable to the lessee's error in transmitting the rental to the wrong office.

The present appeal, however, discloses a situation in which the initial delay attributable to the appellant's error was compounded by the excessive length of time it took employees of the Colorado State Office either to return the payment to appellant or to forward it to the proper office. Inasmuch as the rental check was accompanied by the courtesy notice for the lease, employees of the Colorado State Office had actual notice not only of the proper office for receipt of the check, but also that the payment was due on or prior to August 1. It was not until August 1, however, that the payment was transmitted to the Montana State Office.

We recognize that the various state offices of BLM have numerous and varied tasks which require specialized attention. Nevertheless, a delay of over 2 weeks in transmitting the payment was unjustified. While it is true that but for the initial error of the appellant there would have been no opportunity for the delay occasioned in the Colorado State Office, we feel that this Board must recognize the Department's obligations to react to erroneous actions of members of the public with reasonable dispatch. It is clear that reinstatement in cases such as the one at bar will necessitate a weighing process which at times may turn on fine distinctions. But this is essentially what the Department is required to do in administering the provisions of the reinstatement law.

Accordingly, considering the totality of facts which surrounds the instant appeal, the decision of the Montana State Office, denying reinstatement of lease M 29793 Acq. is reversed and the petition to reinstate the terminated lease is granted, all else being regular.

James L. Burski
Administrative Judge

I concur:

Joan B. Thompson
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN DISSENTING:

Under 30 U.S.C. § 188(c), the authority of the Department in reinstating leases is limited to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. "Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c). Because, under the regulation, 43 CFR 1821.2-2(f), a check does not constitute payment unless it is received at the proper office, it necessarily follows that the requirement of "sending or delivering payment" cannot be met by sending the check to the wrong office. Thus, mailing the check to the wrong office logically and legally precludes a finding of reasonable diligence. Gretchen Capital, Ltd., 37 IBLA 392 (1978).

Contrary to appellant's assertions on appeal, the facts in Gretchen, supra, are not significantly distinguishable from those in the case at bar. The greater part of the Board's discussion and citation of precedent in Gretchen is completely disjunctive of the case before us. Appellant misapprehends the crucial issue in contending that because he mailed his check some 22 days in advance of the anniversary date, the Colorado office, where he mailed it, had ample time to forward it to the proper office in Montana before August 1. The burden of reasonable diligence, however, rests not with the BLM office to which appellant erroneously mailed his check, but with appellant himself. It avails appellant nothing to make allegations regarding a breakdown of the postal service and lack of diligence in the BLM offices. The latter are not responsible for correcting unfortunate clerical errors, or other inadvertences. Contributory negligence on the part of BLM does not afford a sufficient predicate for relief, other than as spelled out in the governing statute.

The majority opinion in essence indulges in a weighing of the comparative negligence of appellant and BLM. There is no warrant for such action in the statute. In the few instances that Congress intended that contributory negligence on the part of BLM should alleviate the lessee's responsibilities, it has so expressly prescribed, e.g., where:

[T]he payment was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or made in accordance with a bill or decision which has been rendered by him and such figure, bill, or decision is found to be in error, resulting in a deficiency * * *.

30 U.S.C. § 188(b) (1976). The rule of inclusio unius alterius exclusio est obtains here.

I would affirm the decision appealed from.

Frederick Fishman
Administrative Judge

45 IBLA 150

